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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID CARLETON, an individual,)
 Plaintiff,) Case No. CV 07-5924 (JSW)
 v.)
) STIPULATION AND [Proposed]
) ORDER on Defendants' Motion to Dismiss
)
) Date: May 16, 2008
) Time: 9:00 a.m.
) Courtroom: Hon. Jeffrey S. White
) United States District Judge
)
 Defendants.)
)
)
)
)
)

The parties jointly submit the following Stipulation and Proposed Order, and respectfully present it for the Court's consideration and approval as a resolution of Defendants' Motion to Dismiss scheduled for hearing on May 16, 2008.

STIPULATION

The parties agree as follows.

1. Defendants represent that the defendant ERISA plan is insured, with respect to plaintiff's claim for disability benefits, by a group disability insurance policy issued by The Prudential Insurance Company of America and/or one of affiliated companies or subsidiaries ("Prudential")

2. Defendants represent that Prudential agrees that it will pay, on behalf of defendants, any monetary award or relief ordered by the Court in favor of plaintiff in this case, if any, including, but not limited to, disability insurance benefits, prejudgment interest, post-judgment interest, costs, and attorneys' fees and expenses.

3. Based on defendants' representations, plaintiff agrees to the dismissal without prejudice of his Second and Third Claims for Relief, and defendants agree to the withdrawal of their pending Motion to Dismiss.

4. The parties agree that plaintiff's Second and Third Claims for Relief may be re-asserted if, and only if, neither defendants nor Prudential pay the monetary award or relief (if any) ordered by the Court in this case. The parties further agree that the Court shall retain jurisdiction of this action for purposes of any further proceedings related to this Stipulation and Proposed Order.

/// [signatures on following page]

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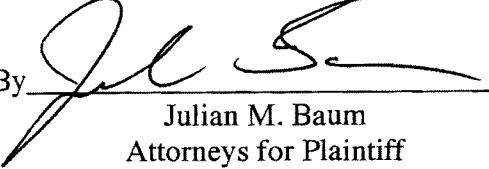
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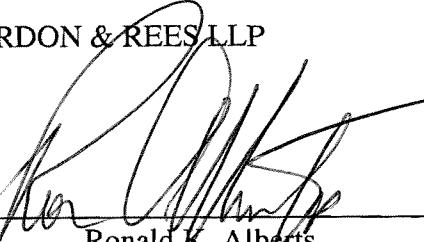
1 BAUM & WEEMS
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4 Date: May 8, 2008
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7 By 
8 Julian M. Baum
9 Attorneys for Plaintiff
10 David Carleton
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13 GORDON & REES LLP
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16 Date: May 8, 2008
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19 By 
20 Ronald K. Alberts
21 Attorneys for Defendants
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24 **ORDER**
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26 The parties having stipulated as set forth above,
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28 **IT IS SO ORDERED.** The hearing presently scheduled for May 16, 2008 is
VACATED.

29 DATED: MAY 12, 2008
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33 JEFFREY S. WHITE
34 UNITED STATES DISTRICT JUDGE
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